The purpose of this letter is to provide guidance for Long Term Care - Regulatory (LTC-R) surveyors concerning appropriate nursing facility practice regarding resident sexual behavior and abuse.

REPORTING ALLEGATIONS OF ABUSE

All allegations of abuse, including sexual abuse, are reported immediately upon learning of the allegation. Anyone who has cause to believe that sexual abuse has occurred, even in the absence of an allegation, must immediately report the incident to the Texas Department of Human Services (TDHS). Facilities are required to:

- report the allegation of abuse;
- conduct and document a thorough investigation of each alleged incident;
- complete an appropriate assessment of the residents involved; and
- implement a plan of action designed to prevent recurrence.

Inappropriate sexual behavior not directed towards a particular individual, that does not result in an allegation and does not constitute cause to believe sexual abuse has occurred, must be addressed, but need not be reported.

DEFICIENT PRACTICE

Deficient practice may arise from facility failure to:

- report allegations;
- thoroughly investigate and document allegations;
- properly assess residents, either on an initial or annual assessment or through a reassessment due to a significant change in condition; or
- implement a plan of action to prevent recurrence.
The occurrence of sexual abuse does not necessarily constitute evidence of deficient practice. However, the facility’s failure to address important early warning signs (see Attention to Early Warning Signs) may constitute a deficient practice.

A thorough facility investigation includes:

- interviewing the individuals involved;
- interviewing all witnesses;
- notifying the physicians and, where appropriate, the families of the involved residents, (in some situations such as consensual sexual activity, the resident's right to privacy overrules any requirement to notify family); and
- recording all relevant physical findings.

ATTENTION TO EARLY WARNING SIGNS

If a resident begins to exhibit inappropriate sexual behavior such as making unwanted sexual advances, the facility must assess the resident and promptly intervene, taking appropriate action to protect other residents even if no allegation of sexual abuse is made. Appropriate actions include steps such as additional supervision for physically or sexually aggressive residents and appropriate medical and psychiatric evaluation and treatment.

Inappropriate sexual behavior may first be directed towards staff or may be minor in nature. It is important that facilities assess and intervene at this point, rather than after inappropriate behavior is directed toward other residents or escalates.

DETERMINATION OF CONSENSUAL SEXUAL ACTIVITY

When a third party (other than the victim or the aggressor) makes an allegation of sexual abuse, it is necessary to determine whether the sexual activity was consensual. In the case of a resident who has been adjudicated incompetent, the guardian must have provided consent. In all other cases, consent must come from the resident. A resident may have decision-making capacity over sexual matters, even though he or she lacks the ability to handle the entirety of his or her life affairs.

SEXUAL ABUSE INCIDENTS

In the absence of allegations of abuse, consensual sexual activity between residents having specific decision-making capacity over sexual matters is not a reportable incident. Sexual activity involving a resident without specific decision-making capacity over sexual matters is an incident of sexual abuse and must be reported and addressed.

FACILITY RESPONSIBILITY

When any resident's sexual behavior constitutes a threat to the health and safety of other residents, the facility must protect other residents from that threat. Minimum evidence of protection must include both assessment and prompt intervention. The facility must reassess the aggressor’s behavior and adjust the care plan accordingly. The facility must take specific steps to control the aggressor's behavior and to protect other residents. The facility plan of action may include steps such as:
specific psychiatric or medical therapy for the aggressor resident;
additional supervision of residents;
activities and other interventions that redirect the energies of the aggressor resident; and
such care plan changes as will minimize the risk of recurrent episodes of sexual or physical abuse.

If the facility’s actions do not remedy the situation, immediate discharge of the aggressor resident is an option (see Tag F-201.) Thirty days discharge notice is not required when uncontrolled resident behavior constitutes a threat to the health or safety of other residents. However, the facility must show evidence that interventions prior to discharge were attempted.

**SURVEYOR RESPONSIBILITY**

Surveyors should refer to the actual rule language and the State Operations Manual (SOM) Guidance to Surveyors before citing F-tags related to sexual abuse. In addition, surveyors should ask themselves the following questions when deciding whether to cite a facility for deficient practice:

1. Was the resident sexual behavior consensual?
2. If not, was the incident an unprecedented episode of sexually inappropriate behavior by the aggressor?
3. Was the event a behavioral manifestation of the aggressor's disease processes that had been assessed, addressed through appropriate interventions, and documented in the plan of care or was the behavior abuse, as defined in §19.101 of the requirements?
4. What was the facility's response to resident sexual behavior and possible abuse?
5. Was a thorough investigation of the allegation or incident conducted?
6. Were immediate steps taken to protect the resident(s) from further abuse?
7. If there were early warning signs, did the facility recognize and respond to them?
8. Did the facility properly assess the resident(s)?
9. Did the facility implement an action plan with one or more intervention elements (medical intervention, psychiatric evaluation, supervision, or redirection interventions) designed to prevent recurrences?
10. Were the involved residents' physicians' involved in the assessment and action plan processes?
11. Where appropriate, were the families consulted and involved in the action plan? (In some situations such as consensual sexual activity, the resident's right to privacy overrules the requirement to notify family.)

{Original Signature on File}

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